

BRIAN M. BOYNTON
Acting Assistant Attorney General
MARCIA BERMAN
Assistant Director, Federal Programs Branch
KATHRYN L. WYER (Utah Bar No. 9846)
U.S. Department of Justice, Civil Division
1100 L Street, N.W., Room 12014
Tel. (202) 616-8475
kathryn.wyer@usdoj.gov
Attorneys for Defendants

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

ISAI BALTEZAR & JULIE CHO,

Plaintiffs,

v.

MIGUEL CARDONA, *et al.*,

Defendants.

Case No. 5:20-cv-455-EJD

**DEFENDANTS' RESPONSE TO
ADMINISTRATIVE MOTION OF HOUSING
AND ECONOMIC RIGHTS ADVOCATES AND
THE PROJECT ON PREDATORY STUDENT
LENDING TO FILE AN AMICUS CURIAE
BRIEF IN SUPPORT OF PLAINTIFFS**

Pursuant to Local Rule 7-11, Defendants Miguel Cardona, in his official capacity as Secretary of Education, and the U.S. Department of Education ("Department"), through undersigned counsel, submit this response to an administrative motion to file an amicus brief ("Motion to File"), filed by two organizations, Housing and Economic Rights Advocates and the Project on Predatory Student Lending (together, "Proposed Amici"). *See* ECF No. 55. Proposed Amici state in their motion that Defendants have "not consented" to their proposed filing of an amicus brief. *Id.* at 3. However, Proposed Amici fail to mention Defendants' repeated offers of consent on condition that Proposed Amici and Plaintiffs agree to a reasonable time and opportunity for Defendants to respond to Proposed Amici's amicus brief—all of which were rejected by both Plaintiffs and Proposed Amici.

As detailed in Defendants' Motion for Enlargement of Time from November 18, 2021 to December 3, 2021 to File Reply in Support of Defendants' Motion for Voluntary Remand Without

1 Vacatur [ECF No. 51], filed on November 15, 2021, Plaintiffs refused to agree to a fifteen-day
2 extension for Defendants' reply brief, though they failed to identify any prejudice that they would
3 suffer from such an extension. Counsel for Proposed Amici first contacted undersigned counsel on
4 November 17, 2021, to seek Defendants' consent for their amicus filing. At that time, Defendants'
5 reply deadline was the next day, November 18, 2021, and Plaintiffs' counsel would not agree to
6 an extension beyond November 24, 2021—a date when undersigned counsel would be unavailable
7 due to planned Thanksgiving travel. Undersigned counsel indicated to counsel for Proposed Amici
8 that, in light of Plaintiffs' position on Defendants' reasonable extension request, Proposed Amici's
9 request appeared to be too late to allow for any response by Defendants to their proposed brief.

10 At the same time, in light of the request by counsel for Proposed Amici, undersigned
11 counsel again proposed to Plaintiffs' counsel that the parties stipulate to extend Defendants' reply
12 deadline to December 3, 2021, so that Defendants would be able to incorporate any response to
13 Proposed Amici's filing in their reply. However, Plaintiffs did not agree to Defendants' proposal.
14 Instead, the parties stipulated that Defendants' reply deadline be extended by three days, to
15 November 23, 2021.

16 In response to a further inquiry from counsel for Proposed Amici, counsel for Defendants
17 then proposed that Defendants would consent to Proposed Amici's Motion to File if both Proposed
18 Amici and Plaintiffs provided assurances that they would stipulate to allowing Defendants to file
19 a response to the amicus brief on or before December 3, 2021, should Defendants deem a response
20 warranted. However, Proposed Amici did not agree to provide such assurances. Nor did Proposed
21 Amici agree to provide a statement of Defendants' position in their Motion to File, as Defendants
22 requested. Proposed Amici filed their Motion to File and proposed amicus brief on the afternoon
23 of Friday, November 19, 2021.

24 Despite the short schedule, Defendants have now filed a Reply including brief responses
25 to Proposed Amici's proposed brief. Given the content of the proposed brief, Defendants do not
26 deem a further response necessary. Defendants therefore consent to Proposed Amici's Motion to
27 File.

1
2 Dated: November 23, 2021

Respectfully submitted,

3 BRIAN M. BOYNTON
4 Acting Assistant Attorney General

5 MARCIA BERMAN
6 Assistant Director, Federal Programs Branch

7 /s/ Kathryn L. Wyer

8 KATHRYN L. WYER (Utah Bar No. 9846)
9 U.S. Department of Justice, Civil Division
10 1100 L Street, N.W., Room 12014
11 Tel: (202) 616-8475
12 Email: kathryn.wyer@usdoj.gov

13 *Attorneys for Defendants*
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28